IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF OREGON

DONALD E.L. JOHNSON, JR., Plaintiff, v. UNITED STATES, Defendant,	)	Civil No. 07-3030
	)	ORDER TO PROCEED IN FORMA PAUPERIS AND FINDINGS AND RECOMMENDATION TO DISMISS

MARK D. CLARKE, Judge.

Plaintiff's Application to proceed *in forma pauperis* (#1) is allowed. However, for the reasons set forth below, plaintiff's complaint should be dismissed, without service of process, on the basis that it is frivolous. See 28 U.S.C. § 1915(d).

A complaint filed *in forma pauperis* may be dismissed before service of process if it is deemed frivolous under 28 U.S.C. § 1915(d). Neitzke v. Williams, 490 U.S. 319, 324 (1989); Jackson

v. State of Ariz., 885 F.2d 639, 640 (9th Cir. 1989). A complaint is frivolous "where it lacks an arguable basis in law or in fact." Nietzke, 490 U.S. at 325; Lopez v. Dept. of Health Services, 939 F.2d 881, 882 (9th Cir. 1991); Jackson, 885 F.2d at 640. The term "'frivolous' . . . embraces not only the inarguable legal conclusion, but also the fanciful factual allegation." Neitzke, 490 U.S. at 325 (footnote omitted); McKeever v. Block, 932 F.2d 795, 798 (9th Cir. 1991); Jackson, 885 F.2d at 640.

Accordingly, in reviewing a complaint for frivolity, a trial court may "pierce the veil of the complaint's factual allegations and dismiss those claims whose factual contentions are clearly baseless." Neitzke, 490 U.S. at 327. In so doing, the assessment of the factual allegations must be weighted in favor of the plaintiff. Denton v. Hernandez, 112 S.Ct. 1728, 1733 (1992).

"Baseless" claims subject to sua sponte dismissal include those "describing fantastic or delusional scenarios." Neitzke, 490 U.S. at 328; Denton, 112 S.Ct. at 1733; McKeever, 932 F.2d at 798. "[A] finding of factual frivolousness is appropriate when the facts alleged rise to the level of the irrational or the wholly incredible." Denton, 112 S.Ct. at 1733.

Although plaintiff's complaint difficult to parse, plaintiff claim appears to be that because the United States Constitution didn't not prohibit "[t]he Migration or Importation of such Persons [color/negro/nigger/African america]" (sic) and that "the Treasury of this United States of America to rich of the tax/duty

imposed on such importation," the defendant should be liable in this "class action" for twelve trillion dollars."

This court finds that the factual allegations in the instant case are irrational and wholly incredible. Regardless of how liberally the complaint is construed, the allegations fail to state a claim. Accordingly, the complaint should be dismissed.

CONCLUSION

Based on the foregoing, plaintiff's complaint should be DISMISSED. Because it is apparent that the deficiencies of the complaint cannot be cured by amendment, the dismissal should be with prejudice.[1]

This recommendation is not an order that is immediately appealable to the Ninth Circuit Court of Appeals. Any notice of appeal pursuant to Rule 4(a)(1), Federal Rules of Appellate Procedure, should not be filed until entry of the district court's judgment or appealable order. The parties shall have ten days from the date of service of a copy of this recommendation within which to file specific written objections. Failure to timely file objections to any factual determinations of the Magistrate Judge will be considered a waiver of a party's right to de novo consideration of the factual issue and will constitute a waiver of a party's right to appellate review of the findings of fact in an

---

[1] Dismissal with prejudice refers to plaintiff's ability to file another *in forma pauperis* action raising the same claim. See Denton v. Hernandez, 112 S.Ct. 1728, 1734 (1992).

order or judgment entered pursuant to the Magistrate Judges's recommendation.

DATED this 4 day of June, 2007.

Mark D. Clarke
United States Magistrate Judge